

1 Introduced by Committee on Corrections and Institutions

2 Date:

3 Subject: Public records; corrections; offender files

4 Statement of purpose of bill as introduced: This bill proposes to:

5 (1) extend existing law designating inmate files as confidential in order  
6 to extend confidentiality to apply to offender files;

7 (2) require that if exceptions to the confidentiality of offender files are  
8 created by the Commissioner of Corrections, any such exception be created  
9 through a rule adopted pursuant to the Administrative Procedure Act;

10 (3) establish principles to guide the exercise of rulemaking authority by  
11 the Commissioner of Corrections in creating exceptions to the confidentiality  
12 of offender files.

13 An act relating to the confidentiality of offender files

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 28 V.S.A. § 601 is amended to read:

16 § 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING

17 OFFICER OF EACH CORRECTIONAL FACILITY

18 The supervising officer of each facility shall be responsible for the efficient  
19 and humane maintenance and operation and for the security of the facility,  
20 subject to the supervisory authority conferred by law upon the Commissioner.

1 Each supervising officer is charged with the following powers and  
2 responsibilities:

3 \* \* \*

4 (10) To establish and maintain, in accordance with such rules and  
5 regulations as are established by the Commissioner, ~~a central file at the facility~~  
6 ~~containing an individual file~~ records for each inmate. ~~Except as otherwise may~~  
7 ~~be indicated by the rules and regulations of the Department, the content of the~~  
8 ~~file of an inmate shall be confidential and shall not be subject to public~~  
9 ~~inspection except by court order for good cause shown and shall not be~~  
10 ~~accessible to inmates at the facility. Except as otherwise provided by law, the~~  
11 ~~contents of an inmate's file may be inspected, pursuant to a court order issued~~  
12 ~~ex parte, by a state or federal prosecutor as part of a criminal investigation if~~  
13 ~~the court finds that the records may be relevant to the investigation. The~~  
14 ~~information in the files may be used for any lawful purpose but shall not~~  
15 ~~otherwise be made public.~~

16 Sec. 2. 28 V.S.A. § 107 is added to read:

17 § 107. CONFIDENTIALITY OF OFFENDER RECORDS; EXCEPTIONS

18 Records of offenders maintained by the Department relating to the  
19 Department's custody or supervision of the offender are exempt from public  
20 inspection and copying and shall be kept confidential, except that the  
21 Department:

1           (1) Shall release or permit inspection of such records by court order for  
2           good cause shown.

3           (2) Shall release or permit inspection of such records to a State or  
4           federal prosecutor as part of a criminal investigation pursuant to a court order  
5           issued ex parte if the court finds that the records may be relevant to the  
6           investigation.

7           (3) May release or permit inspection of such records to specific persons  
8           or to any person in accordance with rules that the Commissioner may adopt  
9           pursuant to 3 V.S.A. chapter 25. In adopting any such rules, the Commissioner  
10           shall only authorize disclosure of a record if the benefit to the subject of the  
11           record or the public interest served by disclosure of the record outweighs the  
12           privacy or other public interest in keeping the record confidential.

13           Sec. 3. EFFECTIVE DATE; TRANSITION PROVISION

14           (a) This act shall take effect on passage.

15           (b) Except as provided in subsection (c) of this section, the Commissioner  
16           may only release offender records in reliance upon an exception to the  
17           confidentiality of offender files if the exception is created by law, including  
18           pursuant to rules adopted in accordance with the Administrative Procedure  
19           Act, 3 V.S.A. chapter 25 under the authority granted under Sec. 2 of this act,  
20           28 V.S.A. § 107(3).

1        (c) The Department of Corrections may rely upon exceptions to the  
2        confidentiality of offender files under directives adopted by the Department  
3        prior to the effective date of this act until the Commissioner of Corrections  
4        adopts rules pursuant to the authority granted under Sec. 2 of this act,  
5        28 V.S.A. § 107(3). The Commissioner shall initiate rulemaking in order that  
6        any such rule takes effect on or before February 15, 2017.